

NOTE: CHANGES MADE BY THE COURT

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

NICOLE GRAHAM,

Plaintiff,

vs.

ASHTON CARTER, Secretary,  
United States Department of  
Defense,

Defendant.

Case No: CV 15-1007 PSG (JPRx)

**STIPULATED PROTECTIVE  
ORDER**

The Honorable Phillip S. Gutierrez

1     **1. A. PURPOSES AND LIMITATIONS**

2           Discovery in this action is likely to involve production of confidential or  
3 private information for which special protection from public disclosure and from  
4 use for any purpose other than prosecuting this litigation may be warranted.  
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the  
6 following Stipulated Protective Order. The parties acknowledge that this Order  
7 does not confer blanket protections on all disclosures or responses to discovery and  
8 that the protection it affords from public disclosure and use extends only to the  
9 limited information or items that are entitled to confidential treatment under the  
10 applicable legal principles. The parties further acknowledge, as set forth in Section  
11 12.3, below, that this Stipulated Protective Order does not entitle them to file  
12 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures  
13 that must be followed and the standards that will be applied when a party seeks  
14 permission from the Court to file material under seal.

15           **B. GOOD CAUSE STATEMENT**

16           This action is likely to involve confidential and private information for  
17 which special protection from public disclosure and from use for any purpose other  
18 than prosecution of this action is warranted. Such confidential and private  
19 materials and information consist of, among other things, confidential job-related  
20 applications (including information implicating privacy rights of third parties),  
21 information otherwise generally unavailable to the public, or which may be  
22 privileged or otherwise protected from disclosure under state or federal statutes,  
23 court rules, case decisions, or common law. Accordingly, to expedite the flow of  
24 information, to facilitate the prompt resolution of disputes over confidentiality of  
25 discovery materials, to adequately protect information the parties are entitled to  
26 keep confidential, to ensure that the parties are permitted reasonable necessary uses  
27 of such material in preparation for and in the conduct of trial, to address their  
28 handling at the end of the litigation, and serve the ends of justice, a protective order

1 for such information is justified in this matter. It is the intent of the parties that  
 2 information will not be designated as confidential for tactical reasons and that  
 3 nothing be so designated without a good faith belief that it has been maintained in  
 4 a confidential, non-public manner, and there is good cause why it should not be  
 5 part of the public record of this case.

## 6 2. DEFINITIONS

7 2.1 Action: *Graham v. Carter*, case no. CV 15-1007 PSG (JPRx)

8 2.2 Party: any party to this Action, including all of its officers, directors,  
 9 employees, consultants, retained experts, and Outside Counsel of Record (and their  
 10 support staff).

11 2.3 Non-Party: any natural person, partnership, corporation, association,  
 12 or other legal entity not named as a Party to this action.

13 2.4 “CONFIDENTIAL” Information or Items: information (regardless of  
 14 how it is generated, stored or maintained) or tangible things that qualify for  
 15 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
 16 the Good Cause Statement.

17 2.5 Designating Party: a Party or Non-Party that designates information or  
 18 items that it produces in disclosures or in responses to discovery as  
 19 “CONFIDENTIAL.”

20 2.6 Challenging Party: a Party or Non-Party that challenges the  
 21 designation of information or items under this Order.

22 2.7 Disclosure or Discovery Material: all items or information, regardless  
 23 of the medium or manner in which it is generated, stored, or maintained (including,  
 24 among other things, testimony, transcripts, and tangible things), that are produced  
 25 or generated in disclosures or responses to discovery in this matter.

26 2.8 Expert: a person with specialized knowledge or experience in a matter  
 27 pertinent to the litigation who has been retained by a Party or its counsel to serve  
 28 as an expert witness in this Action.

1           2.9 Outside Counsel of Record: attorneys who are not employees of a  
 2 Party to this Action but are retained to represent or advise a Party to this Action  
 3 and have appeared in this Action on behalf of that Party or are affiliated with a law  
 4 firm which has appeared on behalf of that Party, and includes support staff.

5           2.10 House Counsel: attorneys who are employees of a Party to this  
 6 Action. House Counsel does not include outside counsel of record or any other  
 7 outside counsel.

8           2.11 Counsel: Outside Counsel of Record and House Counsel (as well as  
 9 support staff).

10          2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
 11 Discovery Material in this Action.

12          2.13 Professional Vendors: persons or entities that provide litigation  
 13 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
 14 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
 15 and their employees and subcontractors.

16          2.14 Protected Material: any Disclosure or Discovery Material that is  
 17 designated as "CONFIDENTIAL."

18          2.15 Receiving Party: a Party that receives Disclosure or Discovery  
 19 Material from a Producing Party.

### 20    3. SCOPE

21          The protections conferred by this Stipulation and Order cover not only  
 22 Protected Material (as defined above), but also (1) any information copied or  
 23 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
 24 compilations of Protected Material; and (3) any testimony, conversations, or  
 25 presentations by Parties or their Counsel that might reveal Protected Material.

26          Any use of Protected Material at trial shall be governed by the orders of the  
 27 trial judge. This Order does not govern the use of Protected Material at trial.

28    ///

1     4.     DURATION

2           Even after final disposition of this litigation, the confidentiality obligations  
3 imposed by this Order shall remain in effect until a Designating Party agrees  
4 otherwise in writing or a court order otherwise directs. Final disposition shall be  
5 deemed to be the later of (1) dismissal of all claims and defenses in this Action,  
6 with or without prejudice; and (2) final judgment herein after the completion and  
7 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
8 including the time limits for filing any motions or applications for extension of  
9 time pursuant to applicable law.

10    5.     DESIGNATING PROTECTED MATERIAL

11         5.1    Exercise of Restraint and Care in Designating Material for Protection:

12       Each Party or Non-Party that designates information or items for protection under  
13 this Order must take care to limit any such designation to specific material that  
14 qualifies under the appropriate standards. The Designating Party must designate  
15 for protection only those parts of material, documents, items, or oral or written  
16 communications that qualify so that other portions of the material, documents,  
17 items, or communications for which protection is not warranted are not swept  
18 unjustifiably within the ambit of this Order.

19         5.2    Manner and Timing of Designations: Except as otherwise provided in  
20 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
21 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
22 under this Order must be clearly so designated before the material is disclosed or  
23 produced.

24       Designation in conformity with this Order requires:

25           (a) For information in documentary form (e.g., paper or electronic  
26 documents, but excluding transcripts of depositions or other pretrial or trial  
27 proceedings), that the Producing Party affix at a minimum, the legend  
28 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that

1 contains protected material. If only a portion or portions of the material on a page  
2 qualifies for protection, the Producing Party also must clearly identify the  
3 protected portion(s) (e.g., by making appropriate markings in the margins).

4 (b) For testimony given in depositions that the Designating Party  
5 identifies on the record before the close of the deposition all protected testimony.

6 (c) For information produced in some form other than documentary and  
7 for any other tangible items, that the Producing Party affix in a prominent place on  
8 the exterior of the container or containers in which the information is stored the  
9 legend "CONFIDENTIAL." If only a portion or portions of the information  
10 warrants protection, the Producing Party, to the extent practicable, shall identify  
11 the protected portion(s).

12 5.3 Inadvertent Failures to Designate: If timely corrected, an inadvertent  
13 failure to designate qualified information or items does not, standing alone, waive  
14 the Designating Party's right to secure protection under this Order for such  
15 material. Upon timely correction of a designation, the Receiving Party must make  
16 reasonable efforts to assure that the material is treated in accordance with the  
17 provisions of this Order.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges: Any Party or Non-Party may challenge a  
20 designation of confidentiality at any time that is consistent with the Court's  
21 Scheduling Order.

22 6.2 Meet and Confer: The Challenging Party shall initiate the dispute  
23 resolution process under Local Rule 37.1 et seq.

24 6.3 The burden of persuasion in any such challenge proceeding shall be  
25 on the Designating Party. Frivolous challenges, and those made for an improper  
26 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
27 parties) may expose the Challenging Party to sanctions. Unless the Designating  
28 Party has waived or withdrawn the confidentiality designation, all parties shall

1 continue to afford the material in question the level of protection to which it is  
 2 entitled under the Producing Party's designation until the Court rules on the  
 3 challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles: A Receiving Party may use Protected Material that is  
 6 disclosed or produced by another Party or by a Non-Party in connection with this  
 7 Action only for prosecuting, defending, or attempting to settle this Action. Such  
 8 Protected Material may be disclosed only to the categories of persons and under  
 9 the conditions described in this Order. When the Action has been terminated, a  
 10 Receiving Party must comply with the provisions of section 13 below (FINAL  
 11 DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a  
 13 location and in a secure manner that ensures that access is limited to the persons  
 14 authorized under this Order.

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items: Unless  
 16 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
 17 Receiving Party may disclose any information or item designated  
 18 "CONFIDENTIAL" only to:

19 (a) the Receiving Party's Outside Counsel of Record in this Action, as  
 20 well as employees of said Outside Counsel of Record to whom it is reasonably  
 21 necessary to disclose the information for this Action;

22 (b) the officers, directors, and employees (including House Counsel) of  
 23 the Receiving Party to whom disclosure is reasonably necessary for this Action;

24 (c) Experts (as defined in this Order) of the Receiving Party to whom  
 25 disclosure is reasonably necessary for this Action and who have signed the  
 26 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

27 (d) the Court and its personnel;

28 (e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions or chosen by the Court.

#### 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order.

(b) Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order.



1 (c) Cooperate with respect to all reasonable procedures sought to be  
2 pursued by the Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served  
4 with the subpoena or court order shall not produce any information designated in  
5 this action as "CONFIDENTIAL" before a determination by the Court from which  
6 the subpoena or order issued, unless the Party has obtained the Designating Party's  
7 permission. The Designating Party shall bear the burden and expense of seeking  
8 protection in that court of its confidential material and nothing in these provisions  
9 should be construed as authorizing or encouraging a Receiving Party in this Action  
10 to disobey a lawful directive from another court.

11 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE  
12 PRODUCED IN THIS LITIGATION

13 (a) The terms of this Order are applicable to information produced by a  
14 Non-Party in this Action and designated as "CONFIDENTIAL." Such information  
15 produced by Non-Parties in connection with this litigation is protected by the  
16 remedies and relief provided by this Order. Nothing in these provisions should be  
17 construed as prohibiting a Non-Party from seeking additional protections.

18 (b) In the event that a Party is required, by a valid discovery request, to  
19 produce a Non-Party's confidential information in its possession, and the Party is  
20 subject to an agreement with the Non-Party not to produce the Non-Party's  
21 confidential information, then the Party shall:

22 (1) promptly notify in writing the Requesting Party and the  
23 Non-Party that some or all of the information requested is subject to a  
24 confidentiality agreement with a Non-Party;

25 (2) promptly provide the Non-Party with a copy of the  
26 Stipulated Protective Order in this Action, the relevant discovery request(s), and a  
27 reasonably specific description of the information requested; and

28 (3) make the information requested available for inspection by

1 the Non-Party, if requested.

2 (c) If the Non-Party fails to seek a protective order from this Court  
 3 within 14 days of receiving the notice and accompanying information, the  
 4 Receiving Party may produce the Non-Party's confidential information responsive  
 5 to the discovery request. If the Non-Party timely seeks a protective order, the  
 6 Receiving Party shall not produce any information in its possession or control that  
 7 is subject to the confidentiality agreement with the Non-Party before a  
 8 determination by the Court. Absent a court order to the contrary, the Non-Party  
 9 shall bear the burden and expense of seeking protection in this court of its  
 10 Protected Material.

11 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

12 If a Receiving Party learns that, by inadvertence or otherwise, it has  
 13 disclosed Protected Material to any person or in any circumstance not authorized  
 14 under this Stipulated Protective Order, the Receiving Party must immediately (a)  
 15 notify in writing the Designating Party of the unauthorized disclosures, (b) use its  
 16 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform  
 17 the person or persons to whom unauthorized disclosures were made of all the terms  
 18 of this Order, and (d) request such person or persons to execute the  
 19 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit  
 20 A.

21 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
 22 PROTECTED MATERIAL

23 When a Producing Party gives notice to Receiving Parties that certain  
 24 inadvertently produced material is subject to a claim of privilege or other  
 25 protection, the obligations of the Receiving Parties are those set forth in Federal  
 26 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
 27 whatever procedure may be established in an e-discovery order that provides for  
 28 production without prior privilege review. Pursuant to Federal Rule of Evidence

1 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure  
2 of a communication or information covered by the attorney-client privilege or  
3 work product protection, the parties may incorporate their agreement in the  
4 stipulated protective order submitted to the court if the court so approves.

5 12. MISCELLANEOUS

6 12.1 Right to Further Relief: Nothing in this Order abridges the right of any  
7 person to seek its modification by the Court in the future.

8 12.2 Right to Assert Other Objections: By stipulating to the entry of this  
9 Protective Order no Party waives any right it otherwise would have to object to  
10 disclosing or producing any information or item on any ground not addressed in  
11 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
12 any ground to use in evidence of any of the material covered by this Protective  
13 Order.

14 12.3 Filing Protected Material: A Party that seeks to file under seal any  
15 Protected Material must comply with Civil Local Rule 79-5. Protected Material  
16 may only be filed under seal pursuant to a Court order authorizing the sealing of  
17 the specific Protected Material at issue. If a Party's request to file Protected  
18 Material under seal is denied by the Court, then the Receiving Party may file the  
19 information in the public record unless otherwise instructed by the Court.

20 13. FINAL DISPOSITION

21 After the final disposition of this Action, as defined in paragraph 4, within  
22 60 days of a written request by the Designating Party, each Receiving Party must  
23 return all Protected Material to the Producing Party or destroy such material. As  
24 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
25 compilations, summaries, and any other format reproducing or capturing any of the  
26 Protected Material. Whether the Protected Material is returned or destroyed, the  
27 Receiving Party must submit a written certification to the Producing Party (and, if  
28 not the same person or entity, to the Designating Party) by the 60 day deadline that

(1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: September 8, 2015

*(See Attachment)*

Kelli D. Burritt  
Attorneys for Plaintiff Nicole Graham

DATED: September 8, 2015

*/s/ Chung H. Han*

Chung H. Han  
Assistant United States Attorney  
Attorneys for Defendant Ashton Carter, in his official capacity as  
Secretary, United States Department of Defense

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

1  
2 DATED: September 14, 2015

3 

4 

---

The Honorable Jean P. Rosenbluth  
United States Magistrate Judge  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
 that I have read in its entirety and understand the Stipulated Protective Order that  
 was issued by the United States District Court for the Central District of California  
 on [date] in the case of Graham v. Carter, case no. CV 15-1007 PSG (JPRx). I  
 agree to comply with and to be bound by all the terms of this Stipulated Protective  
 Order and I understand and acknowledge that failure to so comply could expose  
 me to sanctions and punishment in the nature of contempt. I solemnly promise that  
 I will not disclose in any manner any information or item that is subject to this  
 Stipulated Protective Order to any person or entity except in strict compliance with  
 the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District  
 Court for the Central District of California for the purpose of enforcing the terms  
 of this Stipulated Protective Order, even if such enforcement proceedings occur  
 after termination of this action. I hereby appoint \_\_\_\_\_  
 [print or type full name] of \_\_\_\_\_ [print  
 or type full address and telephone number] as my California agent for service of  
 process in connection with this action or any proceedings related to enforcement of  
 this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_